EARLE B. WILSON

(b)(6) [redacted]

(b)(6) [redacted]
404-331-0907 (Work)

Citizenship: USA
Social Security No. XXX-XX-XXXX
Highest Civilian Grade: IJ 04 (Presently Held)

EXPERIENCE:

U.S. Department of Justice
EOIR, Falls Church, Virginia

Immigration Judge (Miami, Orlando & Atlanta) -- October 2005 to Present
Conduct removal hearings in cases involving detained and non-detained foreign nationals. As to both the detained docket and non-detained docket, review and decide written motions, analyze complex legal issues involving immigration and criminal statutes, conduct hearings on removability and relief from removal, and issue oral or written decisions. Also, as to the detained docket, analyze criminal statutes to determine what, if any, impact relevant convictions may have on the alien's eligibility for bond and/or relief.

Ancillary responsibilities include serving as a mentor to new immigration judges, preparing and presenting at immigration judge training seminars, serving as EOIR liaison judge by meeting regularly with EOIR stakeholders, and mentoring judicial law clerks and interns.

U.S. Department of Justice
Civil Division, Office of Immigration Litigation
Washington, D.C.

Senior Litigation Counsel -- January 2003 to October 2005
As one of three supervisors on a litigating team, reviewed the work-product of approximately ten staff attorneys assigned to our team. Among other things, advised DHS, ICE and United States Attorney's Offices regarding pending federal immigration litigation, and assumed primary responsibility for litigating cases in district courts and courts of appeals.

Trial Attorney -- October 1998 to December 2002
Represent the federal government in a variety of immigration cases in district courts and courts of appeals throughout the United States. Among other things, analyzed incoming pleadings, developed appropriate litigation strategies, researched pertinent legal issues, conducted discovery, drafted and prepared well-reasoned motions and briefs, and defended the government's legal position in hearings and arguments before federal judges.

U.S. Department of Justice, U.S. Attorney's Office
District of Maryland
Baltimore, MD

Assistant United States Attorney -- October 1996 to October 1998
Represented the federal government in a variety of civil actions, including matters involving employment law, torts law and privacy law. Prepared and responded to discovery, prepared briefs, motions and memoranda for filing in the District Court of Maryland and the Fourth Circuit Court of Appeals. Litigated jury and non-jury trials.

U.S. Securities and Exchange Commission – Division of Enforcement
Washington, D.C.

Branch of Regional Office Assistance – Senior Counsel – 1994 to 1995
Reviewed enforcement recommendations from Regional Offices relating to possible violations of the federal securities laws, including the Investment Advisers Act and the Investment Company Act. Presented recommendations to the Commission, consulted with other divisions and offices within the Commission to ensure that the legal theories of Regional Offices' recommendations were in accordance with the federal securities laws and current Commission policies, and drafted memoranda in opposition, where appropriate, to Regional Offices' recommendations.

Financial Institutions and Fraud Unit – Staff Attorney – January 1992 to 1994
Conducted investigations to determine whether entities or individuals violated the anti-fraud, financial reporting or other provisions of the federal securities laws, drafted "action" memoranda, subpoenas and other document requests, and took sworn testimony in connection with assigned cases.

Honigman Miller Schwartz and Cohn
Detroit, MI

Litigation Associate – September 1990 to January 1992
Represented clients in matters involving securities disputes, environmental disputes and landlord/tenant disputes. Among other things, drafted briefs and argued motions in federal and state courts.

Honorable Joseph W. Hatchett
U.S. Court of Appeals for the Eleventh Circuit
Tallahassee, FL

Judicial Clerk – July 1989 to July 1990
Conducted legal research and drafted opinion memoranda in connection with civil and criminal cases pending before Judge Hatchett.

OTHER

University of the District of Columbia,
David A. Clarke School of Law
Washington, DC

Adjunct Professor - Immigration Law - 1999, 2001 to 2004
Lectured second and third year law students on immigration law, with a focus on the latest immigration reforms brought about by the enactment of the Illegal Immigration and Reform and Immigrant Responsibility Act of 1996.

Florida A&M University, School of Law
Orlando, FL

Adjunct Professor - Immigration Law - 2007
Lectured second and third year law students on immigration law, with a focus on the latest immigration issues, including the impact of REAL ID Act.

EDUCATION

Howard University School of Law, Washington, D.C.
J.D., Cum Laude, 1989

Atlantic Union College, S. Lancaster, Mass.
B.S., Accounting, 1979

LICENSE

State Bar Admission Date: June 1989
Current Bar Membership: State Bar of Maryland

References and additional writing sample available upon request.

SUPPLEMENTAL APPLICANT STATEMENT: by Earle B. Wilson

Job Title: Appellate Immigration Judge (Board Member)
Announcement Number: IJ-10314514-18-TW
Series and Grade: IJ 00

A. Knowledge of Immigration Laws and Procedures (QRF#2)

Since 1998, I have worked exclusively on immigration matters during my employment at U. S. Department of Justice, Civil Division, Office of Immigration Litigation ("OIL") and the Executive Office for Immigration Review ("EOIR").

i. Office of Immigration Litigation

As a trial attorney at OIL, I drafted and filed well over one hundred briefs in various courts of appeals throughout the United States. I argued over twenty cases in various United States Courts of Appeals, including the Second Circuit, Fourth Circuit, Sixth and Ninth Circuit.

In January 2003, I was promoted to the position of Senior Litigation Counsel. In that capacity, I continued to manage my own caseload and served as a reviewer on a team consisting of approximately ten attorneys.

ii. Executive Office for Immigration Review

Since joining EOIR in 2005, I have heard and completed over 18,000 cases while serving as an immigration judge at the Miami, Orlando and Atlanta Immigration Courts. At each court, I inherited previously established dockets that were noteworthy in size and I managed to reduce the pending cases significantly.

Since joining the Atlanta immigration court, I have handled large dockets varying from non-detained, detained and priority cases. On average I complete approximately 1,500 cases each fiscal year. Currently, I hear primarily detained cases, but in effort to assist with docket management, I also maintain a substantial non-detained caseload.

iii. Adjunct Professorship and Conference Presentations

While at OIL, I also served as an adjunct professor of law at the University of the District of Columbia, College of Law, where I taught an immigration law class with a colleague from OIL and, later, with an immigration practitioner in the Washington, DC area. While working as an immigration judge in Orlando, I also served as an adjunct professor of law at Florida A&M University of Law where I was solely responsible for teaching an immigration law class to second and third year law students.

Also, while at OIL, I served as a presenter at training conferences on the topics of "aggravated felonies" and "crimes involving moral turpitude." In that capacity, I was required to keep abreast of any new developments on matters regarding criminal grounds of removal, and to maintain and update written materials to be used during training seminars.

As an immigration judge, I have served on immigration panels at conferences organized by American Immigration Lawyers Association and the Federal Bar Association. My presentations focus largely on discussing immigration procedures and recent development in substantive immigration law as reflected in published federal and administrative precedent decisions.

B. Experience in Handling Complex Legal Issues (QRF#4)

(i) Petitions for Review in the United States Courts of Appeals

While at OIL, and after having demonstrated the ability to handle routine Petition for Review cases in appellate courts, my supervisors routinely assigned me cases involving more complex issues. And later, after demonstrating proficiency in handling cases of substantial complexity, I was promoted to Senior Litigation Counsel, a position which required me to review, guide and assist approximately ten other attorneys in litigating and briefing their cases.

Several of the Petition for Review cases that I personally argued and/or briefed in the U.S. Courts of Appeals were of sufficient complexity or importance that they resulted in the issuance of a published decision. See e.g., Bona v. Gonzales, 425 F.3d 663 (9th Cir. 2005); Cao v. US Dept. of Justice, 421 F.3d 129 (2d Cir. 2005); Al-Fara v. Gonzales, 404 F.3d 733 (3d Cir. 2005); Moussa v. Jennifer, 389 F.3d 550 (6th 2004); Niam v. Ashcroft, 354 F.3d 652 (7th Cir. 2004); Borrero v. Aljets, 325 F.3d 1003 (8th Cir. 2012); Hall v. U.S.I.N.S., 167 F.3d 852 (4th Cir. 1999). By way of example, in Borrero, 325 F.3d 1003, I defended the Immigration and Naturalization Service's (INS) statutory and regulatory authority to detain certain arriving aliens who, after being paroled into the United States, later committed serious crimes while free on immigration parole.

(ii) Federal District Court Litigation

I also have experience in handling difficult and complex cases in federal district court. While working for two years as an AUSA handling civil cases, I litigated (i.e., conducted discovery, and filed and argued motions) a variety of cases involving claims for monetary damages against the United States. Among other things, I handled Federal Tort Claims Act claims, *Bivens* claims, and employment discrimination claims and, with respect to each matter, I drafted and responded to discovery requests and conducted and defended depositions of witnesses.

While at OIL, I litigated cases of significant importance and/or complexity in federal district court dealing with issues involving asset forfeiture, advance parole, and

habeas corpus relief. I also personally filed affirmative Complaints on behalf of the United States in denaturalization cases.

One of the significant habeas petitions that I handled was Roudnahal v. Ridge, 310 F.Supp.2d 884 (N.D. Ohio 2003). I was one of only a few litigators at OIL tasked with defending the "NSEERS" registration requirement that was enacted by Congress in 2002. Perhaps the most notable district court class action case that I litigated is CSS v. Ashcroft, 182 F.3d 1053 (9th Cir. 1999), which involved a challenge to a regulation issued by legacy INS that interpreted the advance parole provision in the 1986 legalization program enacted by Congress. I became involved in the case in 2001 in the United States District Court for the Eastern District of California, after the case had twice been to the United States Supreme court. After extensive discovery, including conducting and defending depositions of senior INS officials and named plaintiffs in Washington, DC, San Diego, California, Seattle, Washington, and Vancouver, Canada, the case was eventually resolved with the entry of a consent order in 2004. Based on my handling of the case, my supervisors at OIL nominated me for a departmental award, and I received the award from the Department of Justice in recognition of my efforts.

(iii) Immigration Court

Several of the cases that I have handled as an immigration judge involved complex legal issues relating to, among other things, matters of national security, and the persecutor bar. In addition, several of my cases were of sufficient importance that they have resulted in a published decision by the Eleventh Circuit Court of Appeals. See, e.g., Zhu v. US Atty Gen., 703 F.3d 1303 (11th Cir. 2013); Lyashchynska v. US Atty Gen., 676 F.3d 962 (11th Cir. 2012); Alhuay v. US Atty Gen., 661 F.3d 534 (11th Cir. 2012).

C. Ability to Manage Cases In a High Volume Context (QRF # 3), Experience Conducting Administrative Hearings (QRF#5), and Analytical, Decision-Making and Writing Abilities (QRF #7)

As an immigration judge with over thirteen years' experience, I have conducted thousands of hearings, and issued scores of oral and written decisions. As mentioned above, I have completed approximately 1,500 cases each year during my tenure as an immigration judge. In addition, most of the cases that I have completed have been affirmed by the Board, which indicates that I routinely exercise sound analytical skills in arriving at reasonable and prudent decisions that comport with applicable law, while at the same time ensuring that the respondent(s) are afforded full substantive and procedural due process.

D. Knowledge of Judicial Practices and Procedures (QRF#6)

My work as an AUSA and as a Senior Litigation Counsel required me to be familiar with the Federal Rules of Civil Procedures and the Federal Rules of Evidence. While litigating in federal district court, I have used the foregoing rules while conducting discovery, depositions, arguing motions, and during trials.

My first direct exposure to judicial practices occurred during my tenure as a judicial law clerk for a judge on the U.S. Court of Appeals for the Eleventh Circuit. In that position, I reviewed well-crafted briefs, prepared for, and observed, oral arguments, and drafted written decisions in accordance with the instructions of the Honorable Joseph W. Hatchett. As an AUSA and a Senior Litigation Counsel, I have appeared in federal district court and courts of appeals on numerous occasions, where I directly observed the conduct of judicial proceedings. Finally, as an immigration judge for over thirteen years, I have direct and first-hand knowledge of the appropriate practices and procedures used in immigration court.

E. Ability to Demonstrate the Appropriate Temperament to Serve as a Board Member (QRF#1)

While working at OIL, I filed briefs and argued dozens of cases in which the respondent(s) argued that the conduct of a particular immigration judge rendered the removal proceedings fundamentally unfair, and thus violated the respondent(s) right to due process. Over time, I also read several published decisions wherein Court of Appeals judges increasingly expressed their displeasure at the conduct of some immigration judges.

The foregoing experiences helped to appreciate the need for appropriate temperament in immigration judges and BIA Board Members, and those experiences have also helped guide my conduct as an immigration judge, and the atmosphere of hearings over which I have presided. My most important goal during the conduct of my hearings is to treat each respondent with respect and dignity, regardless of the merits of his or her case. To date, after serving thirteen years as an immigration judge, I cannot recall a single case in which the BIA has found merit in any claim that I demonstrated bias against a respondent or that my conduct violated a respondent's right to due process.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
ATLANTA, GEORGIA

IN THE MATTER OF:	)	**IN REMOVAL PROCEEDINGS**
	)	
XXXXXXX	)	**File No. A# XXX-XXX-XXX**
	)	
Respondent	)	
	)	

CHARGES: Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act ("Act"), as amended, in that, at any time after admission, Respondent has been convicted of an aggravated felony as defined in section 101(a)(43)(F) of the act, a crime of violence (as defined in section 16 of Title 18, but not including a purely political offense) for which the term of imprisonment ordered is at least one year.

Section 237(a)(2)(A)(ii) of the Act, as amended, in that Respondent, at any time after admission, has been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct.

MOTION: Respondent's Motion to Terminate

APPEARANCES

ON BEHALF OF RESPONDENT:

ON BEHALF OF THE GOVERNMENT:
Office of Chief Counsel
Department of Homeland Security
180 Ted Turner Drive, SW, Suite 332
Atlanta, Georgia 30303

DECISION AND ORDER OF THE IMMIGRATION JUDGE

I. PROCEDURAL HISTORY

Respondent is a native and citizen of Vietnam. On October 12, 2017, the Department of Homeland Security ("Department") issued a Notice to Appear ("NTA"), charging Respondent as removable under Section 237(a)(2)(A)(iii) of the Act for being convicted of an aggravated felony crime of violence, where the term of imprisonment ordered is at least one year, and under Section 237(a)(2)(A)(ii) of the Act for being convicted two crimes involving moral turpitude ("CIMTs"). (See Exh. 1). Respondent contested these charges and moved to terminate on July 30, 2018. For reasons set forth more fully below, the Court finds that Respondent is not removable under either charge and grants Respondent's motion to terminate.

II. EXHIBITS

Exhibit 1: Notice to Appear
Exhibit 2: Respondent's Written Pleadings
Exhibit 3: Respondent's Conviction Record for Simple Battery
Exhibit 4: Respondent's Conviction Record for Theft by Shoplifting

III. STATEMENT OF THE LAW AND DISCUSSION

A. Respondent is not removable for being convicted of an aggravated felony crime of violence.

The Government argues that Respondent's conviction on February 1, 2010 for simple battery in violation of O.C.G.A. § 16-5-23 is an aggravated felony crime of violence. (See Exh. 3). The Court disagrees because Respondent has not been sentenced to one year of imprisonment. INA § 101(a)(43)(F). According to the conviction record, Respondent was "to serve a sentence of twelve months, consisting of twelve days in confinement, credit for twelve days already served, and the remainder on probation." (See Exh. 3) (Emphasis added). The conviction record never stated that the sentence of twelve months was to be served in confinement. (See id). This distinguishes Respondent's case from United States vs. Ayala-Gomez, 255 F.3d 1314, 1316 (11th Cir. 2001), where the conviction record made clear that the respondent was sentenced to five years of confinement and that upon service of eight months in confinement, the respondent could serve the rest of his sentence on probation. (See id). Here, the conviction record clearly stated that Respondent was sentenced to only *twelve* days in confinement, not confinement to be served on probation. To argue otherwise ignores the plain language in the judgment of conviction.

In light of the foregoing, the Court finds that Respondent has not been sentenced to one year of imprisonment, such that his conviction for simple battery is an aggravated felony crime of violence. As such, the Court finds that the Department has not demonstrated by clear and convincing evidence that Respondent is removable under Section 237(a)(2)(A)(iii) of the Act for committing an aggravated felony crime of violence and declines to sustain this charge of removability. See 8 C.F.R. § 1240.8(a).

B. Respondent is not removable for being convicted of two CIMTs.

The Government also argues that Respondent's conviction for theft by shoplifting in violation of O.C.G.A. § 16-8-14 is a CIMT. The Court finds that this argument is without merit because Respondent's conviction for theft by shoplifting does not meet the generic definition of a CIMT.

The generic definition of a CIMT contains two elements: (1) a culpable mental state and (2) reprehensible conduct. Matter of Ortega-Lopez, 26 I&N Dec. 99, 100 (BIA 2013) (citing Matter of Louissaint, 24 I&N Dec. 754, 756–57 (BIA 2009)). A culpable mental state involves "some degree of scienter, either specific intent, deliberateness, willfulness, or recklessness." See Louissaint, 24 I&N Dec. at 756–57. Reprehensible conduct is defined as conduct that is "inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties

owed between persons or to society in general." See Gelin v. U.S. Att'y Gen., 837 F.3d 1236, 1240 (11th Cir. 2016); Matter of E.E. Hernandez, 26 I&N Dec. 397, 398 (BIA 2014); Ortega-Lopez, 26 I&N Dec. at 100.

When determining whether a crime is a CIMT, the Court must apply the categorical and modified categorical approaches. Matter of Silva-Trevino, 26 I&N Dec. 826, 827 (BIA 2016). See Mathis v. United States, 136 S. Ct. 2243, 2247 (2016); Descamps v. United States, 133 S. Ct. 2276, 2283–84 (2013); Taylor v. United States, 495 U.S. 575, 599–602 (1990); Gelin, 837 F.3d at 1240. Under the categorical approach, the Court must determine whether the least conduct criminalized by the statute at issue involves moral turpitude by comparing this statute to the generic definition of a CIMT. See Mathis, 136 S. Ct. at 2248; Gelin, 837 F.3d at 1241; Donawa v. U.S. Att'y Gen., 735 F.3d 1275, 1280 (11th Cir. 2013).

If the statute is divisible, the Court is permitted to use the modified categorical approach and look at the record of conviction to determine whether Respondent was convicted of the generic crime. Shepard, 544 U.S. at 20. See Descamps, 133 S.Ct. at 2285–86. The record of conviction includes charges, jury instructions, bench trial judges' rulings of law and findings of fact, written plea agreements presented to the Court, and facts adopted by Defendants in their guilty pleas. Shepard, 544 U.S. at 20. The record of conviction does not include what Defendants actually did to commit the crime. See Descamps, 133 S. Ct at 2285.

Here, the record shows that Respondent was convicted of theft by shoplifting on January 24, 2013 in violation of O.C.G.A. § 16-8-14. (See Exh. 4). Section 16-8-14 of the Georgia Code[1] provides that people commit the offense of theft by shoplifting if they intend to commit any of the following three acts: (1) appropriate the property to their own use without paying for it, (2) deprive

[1] Section 16-8-14 of the Georgia Code reads:

> **"**A person commits the offense of theft by shoplifting when such person alone or in concert with another person, with the intent of appropriating merchandise to his or her own use without paying for the same or to deprive the owner of possession thereof or of the value thereof, in whole or in part, does any of the following:
>
> **(1)** Conceals or takes possession of the goods or merchandise of any store or retail establishment;
>
> **(2)** Alters the price tag or other price marking on goods or merchandise of any store or retail establishment;
>
> **(3)** Transfers the goods or merchandise of any store or retail establishment from one container to another;
>
> **(4)** Interchanges the label or price tag from one item of merchandise with a label or price tag for another item of merchandise; or
>
> **(5)** Wrongfully causes the amount paid to be less than the merchant's stated price for the merchandise."

the owner of the possession of the property or (3) deprive the owner of the value of the property. O.C.G.A. § 16-8-14; K-Mart Corp. v. Coker, 410 S.E.2d 425, 427 (Ga. 1991). Accord Gilliam v. State, 517 S.E.2d 348, 350 (Ga. Ct. App. 1999). Consequently, a conviction under O.C.G.A. § 16-8-14 may rest on the intent to appropriate or the intent to deprive.

In Matter of Diaz-Lizarraga, 26 I&N Dec. 847 (BIA 2016), the Board of Immigration Appeals ("Board") decided that a theft offense involves reprehensible conduct if it requires: (1) "a taking or exercise of control over another's property *without consent*" and (2) "an intent to deprive the owner of his property either permanently or under circumstances where the owner's property rights are substantially eroded." Id. at 852–53. In Ramos v. U.S. Att'y Gen., 709 F.3d 1066, 1072 (11th Cir. 2013), the Eleventh Circuit held that the intent to appropriate did not constitute the intent to permanently or temporarily deprive the owner of the rights and benefits of ownership.

Based on Diaz-Lizarraga and Ramos, Respondent's conviction for theft by shoplifting is categorically broader than a generic crime involving moral turpitude because it does not involve a permanent taking or a substantial deprivation of the owners' rights. The Court's conclusion is consistent with virtually every unpublished Board decision construing Georgia's shoplifting statute. See Hyun Jin Chung, A 205 109 416 (BIA November 20, 2017) (holding that theft by shoplifting as defined by O.C.G.A. § 16-8-14 is not a CIMT because there is no authority in Georgia law that supports the conclusion that temporary or permanent takings are alternative elements to theft by shoplifting). See also Blessing Tina Odiboh, A 047 117 911 (BIA January 11, 2018) (holding that theft by taking in violation of O.C.G.A. § 16-8-2 is categorically broader than a CIMT because it does not distinguish between substantial and *de minimis* takings); Charles Borromeo Ajaelu, A 058 739 058 (BIA September 3, 2015) (holding that theft by taking in violation of O.C.G.A. § 16-8-2 is overbroad because Georgia courts have stated that one can be convicted of this crime "regardless of the manner in which the property is taken or appropriated); Dieuvu Forvilus, A 071 552 965 (BIA January 28, 2014) (holding that third degree grand theft in violation of Fla. Stat. § 812.014(1) is not a CIMT because it encompasses offenses in which only a temporary taking or appropriation of property is intended); Armando Parra Reyes, A 091 156 708 (BIA November 27, 2013) (holding that theft by taking in violation of O.C.G.A. § 16-8-2 is overbroad because permanent taking is not an element of the crime). As such, there is no need to apply the modified categorical approach.

Because a conviction for theft by shoplifting is not a CIMT, the Court finds that the Department has not demonstrated by clear and convincing evidence that Respondent is removable under Section 237(a)(2)(A)(ii) of the Act for committing two CIMTs. See 8 C.F.R. § 1240.8(a). Accordingly, the Court will not sustain the charge of removability under Section 237(a)(2)(A)(ii) of the Act.

C. The Court will terminate Respondent's removal proceedings because the Department has not established her removability.

According to applicable law, the Court may terminate removal proceedings where the Department has not met its burden to show that Respondent is removable as charged. See Matter of Sanchez-Herbert, 26 I&N Dec. 43, 44 (BIA 2012); Matter of Lopez-Barrios, 20 I&N Dec. 203, 204 (BIA 1990). See generally Matter of E-R-M- & L-R-M-, 25 I&N Dec. 520 (BIA 2011).

Here, the Department has not met its burden to show by clear and convincing evidence that Respondent is removable under either Section 237(a)(2)(A)(ii) or Section 237(a)(2)(A)(iii) of the Act. Therefore, the Court will terminate removal proceedings in Respondent's case.

Based on the foregoing, the Court will enter the following order:

ORDER

It is ordered that: Respondent's Motion to Terminate be hereby **GRANTED**.

_____ _____

Date

Earle B. Wilson
United States Immigration Judge
Atlanta, Georgia

NOTICE OF THE RIGHT TO APPEAL: You are hereby notified that both parties have the right to appeal the Immigration Judge's decision in this case to the Board of Immigration Appeals ("Board"). 8 C.F.R. § 1003.38(a). A Notice of Appeal (Form EOIR-26) must be submitted to the Board within 30 calendar days from the issuance or mailing of this decision. 8 C.F.R. § 1003.38(b). If the final date for filing falls on a Saturday, Sunday, or legal holiday, the filing date is extended to the next business day. Id. If no appeal has been taken within the time allotted to appeal, the Immigration Judge's decision becomes final. Id. By failing to timely file an appeal, a party irrevocably relinquishes the opportunity to obtain review of the Immigration Judge's decision and challenge the ruling.

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U.S. Department of Justice

Executive Office for Immigration Review

Office of the Director

5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

Director

July 25, 2019

MEMORANDUM FOR THE ATTORNEY GENERAL

THROUGH: THE DEPUTY ATTORNEY GENERAL PB-f-JAR 8.1.19

FROM: James R. McHenry III
Director

SUBJECT: Candidate for an Appellate Immigration Judge Position

PURPOSE: To refer to the Attorney General for his consideration the paperwork to appoint a current immigration judge (IJ) that is a candidate to an open appellate immigration judge (AIJ) position located at the Atlanta Immigration Court (IC).

TIMETABLE: At the Attorney General's earliest convenience.

DISCUSSION: The Board of Immigration Appeals (BIA) is the Executive Office for Immigration Review's (EOIR) appellate component, having nationwide jurisdiction to hear appeals from decisions rendered by IJs and certain decisions by district directors of the Department of Homeland Security (DHS). By regulation the BIA has 21 AIJs. It currently has 15 AIJs and six vacancies.

In accordance with the AIJ (also known as Board Member) hiring procedures established on March 8, 2019, a three-member Finalist Panel (Panel) recently convened to evaluate the candidates recommended by EOIR to fill a current Board Member vacancy.

EOIR recommended multiple candidates to the Panel for the vacancy. The Panel reviewed the applicants' written materials and summaries of their interviews conducted by EOIR. The Panel then conducted its own interviews of the candidates for the vacancy. Finally, the Panel discussed the merits of the candidates and agreed to recommend the below listed individual for a vacancy.

The EOIR Director then consulted with the Office of the Deputy Attorney General and the Office of the Attorney General about each recommended candidate. Following these procedures and per the authority delegated by the Attorney General, the EOIR Director determined that IJ Earle B. Wilson should be appointed for an AIJ position to be located at the Atlanta IC. Notwithstanding the delegation of authority to the EOIR Director, the Attorney General retains discretion over the final selection and appointment of candidates.[1]

On October 2, 2005, Earle B. Wilson entered on duty as an IJ after being temporarily appointed by then Attorney General Alberto R. Gonzales. Judge Wilson received a permanent appointment in 2007, also from then Attorney General Gonzales. (See Workflows 861331 and 1205749). During his time as an IJ, he has served in the Miami, Orlando, and currently Atlanta ICs, in which he has performed in an exemplary manner. The candidate has a completed and favorably adjudicated background investigation, and there is no derogatory information that would preclude him from being appointed as the twenty-first AIJ on the BIA, filling a new position established in February 2018. However, his last investigation was completed and adjudicated in 2014, as a result a new investigation will be initiated if appointed. A copy of the candidate's application file is immediately available upon your request.

Judge Wilson presents as an excellent candidate for an AIJ position. He is currently an IJ with nearly 14 years of experience in immigration law, prior to which he had another seven years of immigration experience in the Department of Justice (DOJ), Civil Division (CIV), Office of Immigration Litigation (OIL). Judge Wilson has a strong background of immigration knowledge as well as experience managing a caseload of appellate issues. His interviews denote a candidate well-qualified to serve as an AIJ. EOIR interview officials stated that Judge Wilson "has an excellent background for the position." Another official noted that he is "impressed with [Judge Wilson's] answer regarding how he

[1] Previously, if a current IJ was recommended to become a Board Member, per Departmental guidance it was EOIR practice to put forth first a temporary appointment order establishing a new probationary period, followed by a permanent order upon successful completion of the probationary period. While this remains the practice for non-IJ candidates, for sitting IJs, the Office of Legal Counsel has advised, and the Office of the Deputy Attorney General has concurred, that an incumbent IJ converting to an AIJ position require the same or similar skills and, therefore, should not be placed on a new not-to-exceeds appointment. Therefore, this candidate, having completed his probationary period as an IJ, will be placed on a permanent appointment.

organizes his docket" and confidence that "he would apply these same organizational skills and work ethic to the position of Board Member."

Prior to joining EOIR, Judge Wilson served as first a trial attorney from 1998 to 2002, and then a senior litigation counsel from 2003 to 2005, for the CIV, OIL. In this role, he advised the DHS and the United States Attorney's Offices regarding pending federal immigration litigation, and assumed primary responsibility for litigating immigration cases in District Courts and Courts of Appeals.

Judge Wilson began his career at the DOJ serving as an Assistant United States Attorney (AUSA) in the District of Maryland, from 1996 to 1998. While an AUSA he was responsible for representing the federal government in a variety of civil actions, including matters involving employment law, torts law, and privacy law. Before coming to the DOJ, Judge Couch worked for the United States Securities and Exchange Commission, Division of Enforcement, as senior counsel from 1994 to 1995, and a staff attorney from 1992 to 1994. He also has experience in private practice, serving as a litigation associate for the firm Honigman Miller Schwartz and Cohn from 1990 to 1992.

In addition to the above experience, Judge Wilson served as a judicial clerk to the Honorable Joseph W. Hatchett at the United States Court for the Eleventh Circuit from 1989 to 1990. He has served as an adjunct professor of immigration law at both the University of the District of Columbia, David A. Clarke School of Law in 1999, and 2001 to 2004, and Florida A&M University School of Law in 2007.

Judge Wilson holds a Bachelor of Science degree from Atlantic Union College, South Lancaster, Massachusetts, and a Juris Doctor from the Howard University School of Law, Washington, District of Columbia.

Judge Wilson's current federal service was vetted and no negative information that would preclude his appointment as an AIJ was reported.

Judge Wilson's selection for this AIJ position was made in accordance with the IJ hiring procedures approved by the Attorney General.

An Attorney General Order, appointing Earle B. Wilson as an AIJ, is attached hereto for signature.

RECOMMENDATION: That the Attorney General sign the attached order.

APPROVE: WPBarr
Date: August 14, 2019

Concurring components:

OLC SLS 7.30.19

DISAPPROVE: _____

Nonconcurring components:

None

OTHER: _____

Attachment

Office of the Attorney General
Washington, D. C. 20530

ORDER NO. 4504-2019

APPOINTING EARLE B. WILSON AS AN APPELLATE IMMIGRATION JUDGE

By the authority vested in me as the Attorney General by 8 U.S.C. § 1103(g)(1), I hereby appoint Earle B. Wilson as an Appellate Immigration Judge.

This order shall be effective on the first day of the pay period in which the oath of office is taken.

8/14/2019
Date

William P. Barr
Attorney General